

R E M A R K S

The office action of February 22, 2005 has been reviewed and its contents carefully noted. Reconsideration of this case, as amended, is requested. Claims 1 through 42 remain in this case, claim 36 being amended by this response.

Restriction Requirement

The Examiner has made a restriction requirement and has identified two groups as follows:

Group I - recited in claims 30-36, drawn to a semiconductor device, classified in class 257, subclass 183.

Group II - recited in claims 1-29 and 37-42, drawn to a method of making a semiconductor device, classified in class 438, subclass 60.

The Applicant respectfully elects Group II. This requirement for restriction as best understood is respectfully traversed.

The MPEP states the following with regard to stating a prima facie case of restriction between patentably distinct inventions:

“There are two criteria for a proper requirement for restriction between patentably distinct inventions:

1) The inventions must be independent (see MPEP 802.01, 806.04, 808.01) **or distinct as claimed** (see MPEP 806.05-806.05(i)); and

2) There must be a **serious burden on the examiner** if restriction is not required (see MPEP 803.02, 806.04(a) - 806.04(j), 808.01(a) and 808.02).

GUIDELINES

Examiners must provide reasons and/or examples to support conclusions, but need not cite documents to support the requirement in most cases. **Where plural inventions are capable**

of being viewed as related in two ways, both applicable criteria for distinctness must be demonstrated to support a restriction requirement...For purposes of the initial requirement a serious burden on the examiner may be prima facie shown if the examiner shows by appropriate explanation either separate classification, separate status in the art, or a different field of search as defined in MPEP 808.02.” (MPEP 803)

All of the claims recite related inventions in that each recites a semiconductor device. The Examiner stated that Group II recites a method of making a device, however, this is an incorrect statement. Claims 1-29 and 37-42 claim devices, albeit devices made using a particular method.

The Applicant would also like to point out that this application is a divisional application of 10//456,377, and in that case, the Examiner stated that the claims in the present application all belonged in the same Group, as “Invention II. Claims 70-124, drawn to a semiconductor device, classified in class 257, subclass 190.” (Office action for 10/456,377, dated October 21, 2003, page 2, lines 4-5).

All of the inventions would be searched within the same classes and subclasses. Even if some of the inventions would be classified separately, a thorough search of the prior art for any one of the inventions would include the classes and subclasses of the other inventions.

In addition, a search for the “method” in claims 1-29 and 37-42 was already done by the Examiner in the parent case, and therefore, even if these claims were properly characterized as being in a different Group (which the Applicant does not concede, see argument above), there would be no burden on the Examiner to search all of the claims.

The Applicant requests that the restriction requirement be withdrawn. If the Examiner disagrees, or believes for any other reason that direct contact with Applicants' attorney would advance the prosecution of the case to finality, he is invited to telephone the undersigned at the number given below.

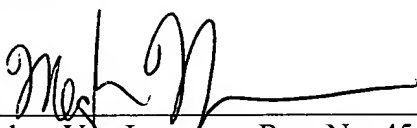
Conclusion

Applicant believes the claims, as amended, are patentable over the prior art, and that this case is now in condition for allowance of all claims therein. Such action is thus respectfully requested. If the Examiner disagrees, or believes for any other reason that direct contact with Applicants' attorney would advance the prosecution of the case to finality, he is invited to telephone the undersigned at the number given below.

"Recognizing that Internet communications are not secured, I hereby authorize the PTO to communicate with me concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file."

Respectfully Submitted:

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